

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

_____)	
UNITED STATES OF AMERICA,)	
Complainant,)	8 U.S.C. § 1324a Proceeding
)	
v.)	OCAHO Case No. 98A00023
)	
REBECCA FISH, INC.,)	Judge Robert L. Barton, Jr.
Respondent.)	
_____)	

NOTICE OF TELEPHONE PREHEARING CONFERENCE
(February 11, 1998)

Pursuant to the First Prehearing Order, the parties have proposed several possible dates and times for a prehearing conference in this case. The telephone conference will commence at 10 a.m. EST on February 24, 1998. The conference call will be initiated by my office and should last approximately one to one and a half hours.

Specifically, during the conference the following topics will be considered:

- (1) the claims in the Complaint and the defenses raised in the Answer, particularly the assertion that the individuals listed in the Complaint as employees were independent contractors;
- (2) the necessity or desirability of amendments to the pleadings;
- (3) the possibility of obtaining admissions or stipulations which will avoid unnecessary proof;
- (4) a prehearing procedural schedule, including dates for the submission of witness and exhibit lists, completion of discovery, and service of motions;
- (5) negotiation, compromise, or settlement of issues;
- (6) the disposition of any pending motions; and

(7) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

See 28 C.F.R. § 68.13(a) (1997); Fed. R. Civ. P. 16(c).

Respondent should be prepared to state, with respect to each of the twenty-eight individuals named in Count I of the Complaint, the circumstances relating to the work that they did, including the specific work they performed, the type of direction Respondent provided them in the performance of their work, the basis for their compensation, and the period of time they performed work for Respondent. Respondent should have any records available during the conference necessary to answer those questions. Complainant also should be prepared to discuss any documentary or other evidence in its possession (including payroll records) that shows that these twenty-eight individuals were not independent contractors. Relevant past cases concerning this issue are United States v. Hudson Delivery Service, Inc., 7 OCAHO 945 (1997), 1997 WL 572126, and United States v. Bakovic, 3 OCAHO 853 (Ref. No. 482) (1993),¹ 1993 WL 404247.

I note that the Complaint in this case was signed by Ms. Lisa Fried, as counsel for INS, whereas the latest pleading was signed for INS by an attorney named Paul P. Szeto. Mr. Szeto has not entered an appearance in this case for the INS, as required by the OCAHO Rules of Practice. See 28 C.F.R. § 68.33(b)(5) (1997).²

If a party or party's counsel fails to obey this order, fails to attend the conference, is substantially unprepared to participate in the conference, or fails to participate in good faith, upon motion by the opposing party or on the Judge's own initiative, sanctions may be imposed on the

¹ Citations to OCAHO precedents in bound Volumes 1-2, Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Employment Practices Laws of the United States, and bound Volumes 3-5, Administrative Decisions Under Employer Sanctions, Unfair Immigration-Related Employment Practices and Civil Penalty Document Fraud Laws of the United States, reflect consecutive decision and order reprints within those bound volumes; pinpoint citations to pages within those issuances are to specific pages, seriatim, of the pertinent volume. Pinpoint citations to OCAHO precedents in volumes subsequent to Volume 5, however, are to pages within the original issuances.

² Ms. Fried informed my office by telephone on January 28, 1998, that she is going on maternity leave and that Mr. Szeto would be assuming responsibility for this case, but neither Mr. Szeto nor Ms. Fried has yet filed the necessary notice or motion to achieve a change in representation of Complainant.

party and/or counsel, including possible dismissal of the complaint or request for hearing or the exclusion of the party's representative, as appropriate. See 28 C.F.R. §§ 68.1; 68.23(c); 68.28; 68.37 (1997).

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February, 1998, I have served the foregoing Notice of Telephone Prehearing Conference on the following persons at the addresses shown, by first class mail, unless otherwise noted:

Paul Szeto
Lisa Fried
Assistant District Counsels
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(FAX and first class mail)

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(Hand Delivered)

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